Supreme Court, U.S.
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No.

In the Supreme Court of the United States

BERNARD H. GLATZER,
Petitioner,

v.

ENRON CORPORATION AND
ENRON NORTH AMERICA CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Denton v. Hernandez*, 504 U.S. 25, 34 (1992), the Court held that when a court dismisses an action as frivolous under 28 U.S.C. § 1915(d), it would be appropriate to consider whether the court has provided a statement explaining the dismissal that facilitates intelligent appellate review. In *Boag v. MacDougall*, 454 U.S. 364, 365, n.* (1982), the Court (per curiam) held that the question of whether the action is frivolous under § 1915(d) must be addressed in the first instance by the district court. In *Hibbs v. Winn*, 542 U.S. 88, 98 (2004), the Court held that a genuinely final judgment is critical under 28 U.S.C. § 2101(c) for the Court to exercise its certiorari jurisdiction. The questions presented are:

1. Did the court of appeals' *refusal* to provide a statement explaining the reasons for its order of dismissal in the first instance, of petitioner's non in forma pauperis appeal and action as frivolous under 28 U.S.C. § 1915(e), violate *Denton* and *Boag*, notwithstanding § 1915(e)'s revision of § 1915(d).

2. Did the court of appeals enter a genuinely final judgment under *Hibbs*, when it refused to issue a judgment, and, instead, treated its order of dismissal as the judgment in the mandate, which *prevented* its modification by a petition for rehearing.

PARTIES TO THE PROCEEDING

Petitioner is Bernard H. Glatzer, claimant-appellant in the courts below.

Respondents are Enron Corporation and Enron North America Corporation, debtors-appellees in the courts below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bernard H. Glatzer respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit.

ORDERS AND MEMORANDUM AND ORDER BELOW

The order of the United States Court of Appeals for the Second Circuit is unreported. The subsequent orders of the Second Circuit Court of Appeals are unreported. The Memorandum and Order of the United States District Court for the Southern District of New York is unreported, but available at 2008 WL 4449439 (S.D.N.Y. Sept. 29, 2008). The order of the United States Bankruptcy Court for the Southern District of New York is unreported, but available on the Electronic Case Filing (ECF) and Pacer systems.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered its order on Dec. 14, 2009. A motion for reconsideration of the order was denied on March 3, 2010. Justice Ginsburg on May 28, 2010 granted petitioner an extension of time to file this Petition for a Writ of Certiorari through July 31, 2010. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

For purposes of Supreme Court Rule 14.1(g)(ii), the basis for federal jurisdiction in the bankruptcy court of first instance was 28 U.S.C. §§ 157(a) and (b).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1915(e) provides:

* * *

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that --

(A) the allegation of poverty is untrue; or

(B) the action or appeal --

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

STATEMENT OF THE CASE

This case is about whether the court of appeals' dismissal in the first instance of petitioner Glatzer's appeal and action as frivolous under 28 U.S.C. § 1915(e), the in forma pauperis statute, by its refusal four times to provide a statement explaining the reasons for its dismissal, when Glatzer is not in forma pauperis in this action and appeal and has never asked to be, violated the Court's parameters for dismissal

under the in forma pauperis statute enunciated in *Boag v. MacDougall*, 454 U.S. 364, 365, n.* (1982) and in *Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

A. The Action In The Bankruptcy Court

The bankruptcy court in the first instance did not dismiss Glatzer's action as frivolous under the in forma pauperis statute, and instead on April 9, 2004 issued an order (App. 18) disallowing pursuant to issue preclusion Glatzer's amended Proofs of Claim for:

1. Enron's and its former Chief Executive Officer Jeffrey K. Skilling's conspiracy with Bear, Stearns & Co., Inc., *et al.*, to distort Glatzer's stolen business plans – the critical genesis of Enron's and Skilling's $180 Billion/Yr. natural gas marketing, trading, and derivatives business – by rendering them Enron's and Skilling's first likely criminal off balance sheet partnership without required 3% true outside equity as described in a handwritten Skilling document. This same lack of required 3% true outside equity was replicated in Enron's subsequent off balance sheet partnerships, whose revelation by the Wall Street Journal in the fall of 2001 caused the collapse and bankruptcy of Enron on Dec. 2, 2001. This claim thus was the subject of a front page article in the Wall Street Journal on June 7, 2005, entitled "His Decade of Chasing Skilling" ("Similar, later projects are at the heart of the alleged fraud at Enron"). App. 27;

2. Quantum meruit recovery from Enron based upon Skilling's compensation directly resulting from Bear, Stearns' securing Skilling's first job at Enron to implement Glatzer's stolen business plans, for which Bear, Stearns effectively admitted it received

monetary payments from Enron which it did not disclose to and about which it lied to a prior federal district court to obtain summary judgment (and which Skilling, similarly, did not disclose to and about which Skilling and Enron lied to a pre-bankruptcy Bronx state court to obtain solely collateral estoppel based summary judgment thereupon).

In return for Bear, Stearns' securing Skilling's first job at Enron, Skilling awarded to Bear, Stearns the investment banking fees for Enron's implementation of Glatzer's stolen business plans in a predetermined public solicitation of bids from financial firms for the investment banking fees. Skilling thus "accepted a *bribe* (his first job at Enron) from a third party (Bear, Stearns) for awarding that party a . . . contract (for the investment banking fees)." *Skilling v. United States*, 561 U.S. _ (at 36) (June 24, 2010). Skilling's accepted bribe from Bear, Stearns was considerably more valuable than a typical cash bribe (or a cash kickback), since Skilling made from his first job at Enron over $250 Million at his peak. In *Skilling*, the Court held that the federal honest services wire fraud statute, 18 U.S.C. § 1346, criminalizes only bribery and kickback schemes. Skilling's obtaining his first job at Enron by arranging for Enron to make payments to Bear, Stearns for getting Skilling his first job in the guise of the investment banking fees – and then lying about it – constitutes Skilling's accepted bribe proscribed by the Court under the federal honest services wire fraud criminal statute;

3. Enron's and Skilling's tortious interference with Glatzer's confidential Aug. 25, 1998 settlement letter with Bear, Stearns of the prior federal action (during its appeal) – wherein Bear, Stearns agreed to use its

best efforts to achieve vacatur of the prior district court's summary judgment grant to Bear, Stearns – by Skilling's inducement of Bear, Stearns' transmission of the confidential settlement letter to Skilling, who utilized the leaked confidential terms to oppose vacatur and to obtain for Enron solely collateral estoppel based summary judgment in the pre-bankruptcy Bronx state court. Enron and Skilling tortiously interfered with the confidential settlement letter – a fully binding preliminary agreement, to further conceal both their conspiracy with Bear, Stearns to create Skilling's and Enron's first likely criminal off balance sheet partnership and Skilling's acceptance of a bribe from Bear, Stearns.

Glatzer alleged analogous claims against Bear, Stearns in a second action in the Bronx state court, which was assigned to Justice Kenneth L. Thompson who previously had presided over Glatzer's pre-bankruptcy action against Enron. Justice Thompson granted on default of both Bear, Stearns and Skilling Glatzer's motion to denominate a commissioner to take Skilling's dispositive oral deposition, which clearly indicated that Glatzer's foregoing analogous claims against Enron were *different* than those upon which he had granted to Enron solely collateral estoppel based summary judgment.

Bear, Stearns then removed the second action to federal court and referred it to United States District Judge Kevin T. Duffy of the Southern District of New York, who previously had presided over Glatzer's first action against Bear, Stearns. On Nov. 22, 2004 Judge Duffy issued an order declining the referred second action as "not similar" to the claims of Glatzer's first action against Bear, Stearns, which again clearly

indicated that Glatzer's foregoing analogous claims against Enron were *different* than those upon which he had granted summary judgment to Bear, Stearns.

The bankruptcy court's April 9, 2004 order (App. 20) disallowed Glatzer's different claims against Enron based upon "the underlying legal principles applied by the State Court in that matter (Justice Thompson) regarding the issue preclusive effect of an order . . . by United States District Judge for the Southern District of New York, Kevin Thomas Duffy." The bankruptcy court refused to allow Glatzer to depose Skilling, the dispositive witness on Glatzer's different claims, despite the bankruptcy court's treatment of Enron's objections as a motion for summary judgment, and refused to make findings of fact required under Bankruptcy Rule 8013.

The bankruptcy court's order also disallowed Glatzer's amended Proof of Claim under 42 U.S.C. § 1983 for Enron's and Skilling's colluding with persons acting under color of state law to enforce a jurisdictionally void (as held by the New York County Family Court) and constitutionally violative California custody modification order, which effectively terminated Glatzer's fundamental *liberty* interest under the Fourteenth Amendment in the custody, care, and maintenance of his children and in his right to a relationship with his children, based upon zero evidence and without any notice to Glatzer of its 1993 hearing.

Prior to her obtaining the California custody modification order, Glatzer's former wife had been found in criminal contempt three times by Pennsylvania and Oklahoma state courts, for her

refusal to comply with her agreed to shared parental responsibility and joint custody of Glatzer's two children in their June 1986 Florida divorce decree. After each state's criminal contempt finding, she fled the state to avoid transfer of primary physical custody to Glatzer, ultimately to California.

At an April 24, 2001 hearing in a prior action in the Bronx state court's matrimonial part, Enron's and Skilling's attorney against Glatzer in the actions before Judge Duffy and Justice Thompson claimed a "coincidence" in his concommitant enforcement of the California custody modification order (contrary to his enforcement directed by Enron and Skilling). Glatzer, unusually, communicated the "coincidence" to the Wall Street Journal on May 23, 2001, which communication was the initial trigger of the Journal's investigation of Enron and Skilling whose published revelations of Enron's financial fraud resulted in the collapse and bankruptcy of Enron on Dec. 2, 2001 six months later, and ultimately over 35 federal indictments of former Enron officers, including Skilling. This unintended chain of events was a perfect example of Justice O'Connor's statement in *Denton v. Hernandez*, 504 U.S. 25, 33 (1982) of "the age old insight that many allegations might be 'strange, but true; for truth is always strange, Stranger than fiction.'"

The bankruptcy court's April 9, 2004 order disallowed this § 1983 claim "for the reasons set forth in Debtors' Objection" (App. 20), which is meaningless since Enron's objections asserted voluminous and mutually exclusive reasons.

B. The Action In The District Appellate Court

In Glatzer's first appeal from the bankruptcy court, the district appellate court dismissed the appeal under Bankruptcy Rule 8009(a) for failure to serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Bankruptcy Rule 8007(b), when Glatzer had not received notice from the district court clerk that his appeal had been docketed. The Second Circuit reversed, in a case of first impression in the circuit, because "the fact that the district court clerk had not sent notice to the parties of the docketing means that for Glatzer's appeal Rule 8009's fifteen-day clock never began to run." *Glatzer v. Enron Corp., et al.*, 475 F.3d 131, 134 (2nd Cir. 2007). ("This appeal arises out of Glatzer's tireless efforts to receive compensation" (*Id.*, at 132)).

On remand, the district appellate court in Glatzer's second appeal affirmed the bankruptcy court's disallowance on the ground that "the legal claims underlying (Glatzer's) Proofs of Claim . . . have already been adjudicated and dismissed by state and federal courts." App. 5. The district appellate court affirmed based upon claim preclusion the bankruptcy court's disallowance based upon issue preclusion. Since the exact opposite of both was the case, Glatzer filed a motion for rehearing which asked the district appellate court to specify in which federal or state court these claims previously were adjudicated; when these claims previously were adjudicated; the result of the court's adjudication; and, which federal or state court vindicated Glatzer's due process right to have these claims adjudicated. The district appellate court's order denying Glatzer's motion for rehearing remained intentionally silent.

C. The Second Circuit's Dismissal In The First Instance Of Glatzer's Second Appeal As Frivolous Under The In Forma Pauperis Statute

On Dec. 14, 2009 the Second Circuit entered an order dismissing in the first instance Glatzer's second appeal and action as frivolous under 28 U.S.C. § 1915(e), the in forma pauperis statute (App. 1), before Glatzer's appellate brief and appendix were served and filed (no briefing schedule had been issued), and even before Glatzer's Form C. Second Circuit Civil Appeal Pre-Argument Statement was served and filed (which attaches a description of the action and the issues proposed to be raised on appeal, including their applicable appellate standard of review).

The order of dismissal provided *no* statement pursuant to *Denton v. Hernandez*, 504 U.S. 25, 34 (1992) explaining the reasons for its dismissal under § 1915(e) or explaining why § 1915(e) is applicable to Glatzer who is not in forma pauperis in this action and appeal and has never asked to be. The order of dismissal provided *no* statement pursuant to *Boag v. MacDougall*, 454 U.S. 364, 365, n.* (1982) explaining why the question of whether the action is frivolous should not have been addressed in the first instance by the bankruptcy court. The order of dismissal was neither an Opinion nor a Summary Order authorized by Second Circuit Local Rule 32.1.1, in both of which the Second Circuit customarily explains the reasons, or gives a summary of the reasons, for its dismissal including under § 1915(e).

The order of dismissal intentionally did *not affirm* either the district appellate court's order of affirmance based upon claim preclusion, or the bankruptcy court's order of disallowance based upon issue preclusion, since the exact opposite of both was evident even based upon an unclear record (e.g., Second Circuit Summary Orders typically have stated "we affirm on the ground that plaintiff's claims were frivolous" (which are unpublished)). The order of dismissal intentionally did not affirm, because it inferred that Glatzer's claims did not need to be adjudicated in the first instance by the bankruptcy court since they were frivolous under § 1915(e), but in the absence of *any* statement explaining its reasons for its contrary position to that of the bankruptcy court.

The order of dismissal was precipitated by Glatzer's motion for alternative injunctive relief served and filed shortly after Glatzer discovered that Enron never established reserves for Glatzer's Disputed Claims, even after the Second Circuit ruled in Glatzer's favor in the first appeal on Jan. 29, 2007 (475 F.3d 131) which did not hold that Glatzer's appeal and same action were frivolous under § 1915(e).

Because the order of dismissal provided no statement explaining the reasons for its dismissal in the truly first instance of Glatzer's second appeal and same action as frivolous under § 1915(e), Glatzer served and filed a motion for clarification of the order of dismissal, which the Second Circuit perfunctorily denied on Jan. 29, 2010 by refusing to state the reasons why Glatzer's appeal and action were frivolous under § 1915(e). App. 23.

Because the Second Circuit refused to issue a judgment based upon its order of dismissal, the court directed Glatzer to serve and file a motion for reconsideration of its order of dismissal – in lieu of Glatzer's motion to file a petition for rehearing within 14 days after entry of judgment pursuant to Fed.R.App.Proc. 40(a)(1) – even though a motion for reconsideration does not exist under the Federal Rules of Appellate Procedure (approved by the Court) and the Second Circuit's Local Rules. *Mancuso v. Herbert*, 166 F.3d 97, 99 (2nd Cir. 1999) (Chief Judge Winter).

In accordance with the Second Circuit's directive, Glatzer served and filed a motion for reconsideration of the order of dismissal, which the Second Circuit perfunctorily denied on March 3, 2010 by again refusing to state the reasons why Glatzer's appeal and action were frivolous under § 1915(e). App. 21.

Glatzer served and filed pursuant to Fed.R.App.Proc. 41(d)(2) a motion to stay the mandate for 90 days pending the filing of this Petition for a Writ of Certiorari, which the Second Circuit perfunctorily denied on March 24, 2010 by again refusing to state the reasons why Glatzer's appeal and action were frivolous under § 1915(e).

Since the Second Circuit refused to issue a judgment, the Clerk issued mandate on March 24, 2010 by treating the Dec. 14, 2009 order of dismissal as the judgment in the mandate (on March 24, 2010 the Clerk stamped the word mandate on the order of dismissal), which because it transfered jurisdiction back to the district appellate court, was mutually exclusive with Glatzer's filing in the Second Circuit within 14 days thereafter a petition for rehearing (or

en banc) under Fed.R.App.Proc. 40(a)(1) (or under Rule 35(c)), to modify the judgment pursuant to Sup. Ct. R. 13.1 and 13.3.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THIS PETITION TO SUMMARILY REVERSE THE SECOND CIRCUIT'S REFUSAL FOUR TIMES TO PROVIDE A STATEMENT EXPLAINING THE REASONS FOR ITS ORDER OF DISMISSAL IN THE FIRST INSTANCE EXPRESSLY PURSUANT TO § 1915(e), OR AS AN ALTERNATIVE, FOR FULL MERITS BRIEFING AND REVIEW

While this Petition does not involve a "split" as do many of the Court's cases, it is about an order of dismissal in the first instance without any explanation of its reasons expressly pursuant to § 1915(e) – which is inapplicable to Glatzer who is not in forma pauperis in this action and appeal and has never asked to be, that is so error-based that the Second Circuit may fairly be said to have "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a). *Florida v. Rodriguez*, 469 U.S. 1, 7 (1984) ("As the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure error-correcting function in federal litigation.").

The absence of a split in this case simply reflects that the order of dismissal in the first instance without any explanation of its reasons for dismissal or why § 1915(e) is applicable to Glatzer, is *so far in error* that

not a single decision in any federal circuit court, including in the Second Circuit, can be found to support it, and that every relevant precedent under § 1915(e) requires the opposite result. Petitioner Glatzer recognizes that this case is not a typical candidate for full review by the Court, but the absence in this Petition of the more usual circuit courts' split does not mean that this Petition should be disregarded. The Court, out of concern for its limited resources and disinclination to consider full merits briefing and review in this case, should summarily reverse the order of dismissal below to protect its decisions construing the in forma pauperis statute in *Denton* and *Boag*, and to remedy an extremely severe disservice to the administration of justice by the order of dismissal's express application of the in forma pauperis statute to Glatzer.

Supreme Court Rule 16.1 provides that the Court may resolve a petition for certiorari by issuing a "summary disposition on the merits." Sup. Ct. R. 16.1. While not frequent, summary dispositions (invariably reversals) occur somewhat regularly. Over the past decade summary reversals have accounted for between 5% and 12% of the Court's published dispositions on the merits. The Court thus has been quite willing to use summary reversal as a more efficient alternative to full merits briefing and review in appropriate cases such as this. The Court also may wish to consider, although unusually, a summary reconsideration order ("GVR") to vacate the order of dismissal below and to remand this case to the Second Circuit for reconsideration in light of the Court's intervening decision in *Skilling*, *supra*, 561 U.S. __ (at 36 and 45) (June 24, 2010), wherein the Court (Justice Ginsburg) held that the federal honest services wire fraud statute

criminalizes only bribery and kickback schemes. This decision is sufficiently analogous to and has a legal bearing on Glatzer's foregoing quantum meruit claim, *supra*, at 3-4 (for which the order of dismissal refused to provide any explanation of the reasons for its dismissal), since the quantum meruit claim is premised upon Skilling's compensation at Enron directly resulting from Bear, Stearns' securing his first job at Enron – Skilling's accepted *bribe* from Bear, Stearns for awarding Bear, Stearns the investment banking fees for Enron's implementation of Glatzer's stolen business plans.

A. The Order Of Dismissal Conflicts With Relevant Decisions Of The Court Construing The In Forma Pauperis Statute

Supreme Court Rule 10(c) provides that a considered reason by the Court in whether to grant a petition for a writ of certiorari is if "a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10 (c). The Second Circuit's order of dismissal in the first instance expressly pursuant to § 1915(e) which provided no statement explaining the reasons for its dismissal, conflicts with the Court's relevant decisions on dismissal under the in forma pauperis statute.

In *Denton v. Hernandez*, 504 U.S. 25, 34 (1992), the Court (Justice O'Connor) construed dismissal under the precursor to § 1915(e), § 1915(d):

> "In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the Court of Appeals to consider, among other things, . . .

> whether the court has provided a statement explaining the dismissal that facilitates 'intelligent appellate review.'"

Contrary to *Denton*, the Second Circuit's order of dismissal in the first instance provided *no* statement explaining the reasons for its dismissal of Glatzer's appeal and action as frivolous under § 1915(e) or why § 1915(e) is applicable to Glatzer, who is not in forma pauperis in this action and appeal and has never asked to be. The Second Circuit's refusal to provide any statement "explaining the dismissal" under § 1915(e) was reiterated in its perfunctory denials without *any* explanation of Glatzer's motion for clarification, motion for reconsideration, and motion to stay the mandate for 90 days pending the filing of this Petition for a Writ of Certiorari, which do not facilitate and, instead, render more difficult "intelligent appellate review" by the Court.

In *Boag v. MacDougall*, 454 U.S. 364, 365, n.* (1982), the Court (per curiam) further construed dismissal under § 1915(d):

> "A question of that character (whether the action is frivolous) must be addressed in the first instance by the District Court."

Contrary to *Boag*, the Second Circuit's order of dismissal provided *no* statement explaining why the question of whether the action is frivolous should not have been addressed in the first instance by the bankruptcy court, or explaining its reasons for its contrary position to that of the bankruptcy court which did not dismiss Glatzer's action as frivolous under § 1915(e). The order of dismissal provided *no*

statement explaining whether § 1915(e)'s revision of § 1915(d) renders the Court's *Boag* rule no longer controlling, upon which the Court has not ruled.

The Second Circuit's order of dismissal in the first instance pursuant to § 1915(e) intentionally did *not affirm* the bankruptcy court's order of disallowance on the merits (contrary to its Summary Orders which typically state "we affirm on the ground that plaintiff's claims were frivolous") – including on whether the bankruptcy court "inappropriately resolved genuine issues of disputed fact . . . applied erroneous legal conclusions . . . and whether the dismissal was with or without prejudice." *Denton*, *supra*, 504 U.S., at 34. With respect to this last factor, the Second Circuit's order of dismissal in the first instance was without prejudice because it was pursuant to § 1915(e)(2)(B)(i) ("lacks an arguable basis in law or fact," which means frivolous (App. 1)) (*Nagy v. FMC Butner*, 376 F.3d 252, 258 (4th Cir. 2004) ("We do not think, however, that Congress intended a dismissal under § 1915(e)(2)(B)(i) to operate as a dismissal with prejudice")); and because it intentionally did not affirm the bankruptcy court's order of disallowance – had it affirmed, the Second Circuit's order of dismissal might be presumed to be with prejudice even though it did not specify whether it was with or without prejudice (*Eason v. Thaler*, 14 F.3d 8, 9, Fn.2 (5th Cir. 1994) ("The court did not specify whether the dismissal was with or without prejudice; we therefore presume that the instant action was dismissed under § 1915(d) without prejudice")).

With respect to this last factor of whether the dismissal was with or without prejudice, the Court further held in *Denton*, *supra*, 504 U.S., at 34:

> "Because a § 1915(d) dismissal is not a dismissal on the merits, but rather an exercise of the court's discretion under the in forma pauperis statute, the dismissal does not prejudice the filing of a paid complaint making the same allegations."

The Court also has not ruled on whether § 1915(e)'s revision of § 1915(d) renders no longer controlling *Denton's* holding that a dismissal under the in forma pauperis statute is "an exercise of the court's discretion" (all federal circuit courts still review a dismissal under § 1915(e) for abuse of discretion, with the exception of the Sixth Circuit). The Second Circuit's order of dismissal under § 1915(e), nonetheless, was "not a dismissal on the merits," because it intentionally did not affirm the bankruptcy court's order of disallowance on the merits, and thus "does not prejudice (Glatzer's filing of a second complaint) making the same allegations."

B. All Federal Circuit Courts Have Held That The Dismissing Court Must Provide A Statement Explaining The Reasons For Its Dismissal Under The In Forma Pauperis Statute

In *Moore v. Mabus*, 976 F.2d 268, 270-271 (5th Cir. 1992), the Fifth Circuit held (the leading case repeatedly cited):

> "We view *Neitzke* and *Denton* as mandating that a . . . record clearly distinguish between findings of factual, legal, or mixed factual and legal frivolousness. In addition, to facilitate a meaningful, 'intelligent appellate review' the

> district court's reasons for a section 1915(d) dismissal should reflect the *Neitzke-Denton* considerations.
>
> . . . .
>
> Applying the *Neitzke* considerations for testing a finding of legal frivolousness, we conclude that the instant case involves . . . (4) an inability to perform an intelligent appellate review . . . because of an inadequate statement of reasons for the dismissal. For these reasons *Neitzke* not only counsels, but commands a reversal of the section 1915(d) dismissal."

In *Harris v, Johnson*, 784 F.2d 222, 224 (6th Cir. 1986), the Sixth Circuit "compell(ed) the district court to focus upon and state the precise basis of its dismissal decision" under § 1915(d). In *Levoy v. Mills*, 788 F.2d 1437, 1438 (10th Cir. 1986), the Tenth Circuit held "the court should furnish a statement of reasons for finding the complaint to be frivolous" under § 1915(d). In *Sills v. Bureau of Prisons*, 761 F.2d 792, 794 (D.C. Cir. 1985), the District of Columbia Circuit held "we have asked the district court to provide a clear statement of reasons when dismissing a complaint under 28 U.S.C. § 1915(d)." In *Besecker v. State of Illinois*, 14 F.3d 309, 310 (7th Cir. 1994), the Seventh Circuit (Chief Judge Posner) held "it is incumbent on the district court to provide a sufficient explanation for its ruling" denying leave to proceed in forma pauperis in the district court. In *Tolefree v. Cudahy*, 49 F.3d 1243 (7th Cir. 1995), the Seventh Circuit (Chief Judge Posner) "reminded" district judges not to grant leave to proceed in forma pauperis on appeal "without a statement of reasons." These decisions were under § 1915(d) because the law was

settled and stable before its revision by § 1915(e), which did not change these uniform mandates.

1. While the Second Circuit has not reported a decision analogous to the foregoing decisions, the Second Circuit has issued numerous Summary Orders under Local Rule 32.1.1 (which are unpublished but available), which are consistent with the foregoing unanimous mandates of the Fifth, Sixth, Tenth, District of Columbia, and Seventh Circuits. The Second Circuit's Summary Orders have affirmed, or vacated, a district court's dismissal of a complaint under § 1915(e) "for the reasons set forth above," or affirmed "for substantially the same reasons set forth in the district court's order." These Summary Orders, however, typically have been entered after an appeal was fully briefed (with a joint appendix), unlike this case where the order of dismissal short-circuited any appeal briefing (and even a pre-argument statement). The Second Circuit did not enter a Summary Order under § 1915(e), because its Summary Order is incompatible with its refusal in this case, before briefing, to provide any statement explaining the reasons for its dismissal under § 1915(e). The Second Circuit, instead, entered only an order (App. 1) without any explanation of its reasons for dismissal, which not only has no precedential effect but (unlike a Summary Order) is both unpublished and unavailable (only the docket sheet entry of the order is available, as confirmed by its Administrative Attorney).

By entering only an order without any explanation of its reasons for dismissal, the Second Circuit simply *buried* Glatzer's claims against Enron (to and on which the Court's intervening decision in *Skilling*, *supra*, 561 U.S. __ (at 36 and 45) (June 24, 2010) is sufficiently

analogous and has a legal bearing), and sought to call it a day with only an order (without a judgment) that does not facilitate the Court's "intelligent appellate review." The Court should not reward this burial and, instead, in a highly appropriate case such as this, resolve this Petition by summary reversal. If the Court declines to summarily reverse the Second Circuit, the Court, as an alternative, should grant certiorari to allow full merits briefing and review in this case.

C. All Federal Circuit Courts Have Held That An Appeal And Action Cannot Be Dismissed Pursuant To § 1915(e), Unless The Appellant Was Proceeding In Forma Pauperis

Glatzer is not in forma pauperis in this action and appeal and has never asked to be. Glatzer did not file a motion in the district court to appeal in forma pauperis under Fed.R.App.Proc. 24(a)(1). Glatzer did not file a motion in the Second Circuit to proceed on appeal in forma pauperis under Fed.R.App.Proc. 24(a)(5). Glatzer did not file a motion to proceed in forma pauperis in the district court under Fed.R.App.Proc. 24(a)(3). Glatzer did not file a motion to proceed in forma pauperis in the bankruptcy court. The Second Circuit was fully cognizant that Glatzer is not in forma pauperis in this action and appeal, but dismissed the appeal and action as frivolous expressly pursuant to § 1915(e).

In *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998), the Fifth Circuit held:

"As Appellant was not proceeding in forma pauperis, his complaint could not be dismissed pursuant to § 1915(e)(2).[1]

[1] See *Marts v. Hines*, 117 F.3d 1504, 1505 (5th Cir. 1997) (en banc) (noting that a dismissal under the IFP statute does not act as a dismissal on the merits but merely as a denial of IFP status)."

In *Benson v. O'Brian*, 179 F.3d 1014, 1016 (6th Cir. 1999), the Sixth Circuit held:

"For the following reasons we hold that § 1915(e)(2) applies only to in forma pauperis proceedings. Most obviously, § 1915 is titled, 'Proceedings in forma pauperis.' To our knowledge no other part of § 1915 has been applied to actions not pursued in forma pauperis. Moreover, § 1915(e) is the product of the PLRA's revision and renumbering of former § 1915(d), and former § 1915(d) clearly applied only to in forma pauperis actions.

. . . .

The structure of § 1915(e) further indicates that it is directed only at in forma pauperis actions. Under § 1915(e)(2)(A) 'the case' may be dismissed because of a false allegation of poverty. Clearly, 'the case' must be an in forma pauperis case for the purposes of subsection A, and it would be anomalous to hold that it could be otherwise for the purposes of subsection B.

. . . .

For the foregoing reasons, we conclude that 28 U.S.C. § 1915(e)(2) is inapplicable to actions that are not pursued in forma pauperis."

In *Sampley v. Ruettgers*, 704 F.2d 491, 493, Fn.2 (10th Cir. 1983), the Tenth Circuit held:

> "2. The district court dismissed the case as frivolous under 28 U.S.C. § 1915(d) (1976). Section 1915(d) applies only to cases brought in forma pauperis. . . . Since nothing in the record indicates that plaintiffs were proceeding in forma pauperis, dismissal under § 1915(d) was improper."

In *Porter v. Fox*, 99 F.3d 271, 273, Fn.1 (8th Cir. 1996), the Eighth Circuit held:

> "1. We note that the new procedures in the Prison Litigation Reform Act of 1996 (PLRA) . . . allowing dismissal for failure to state a claim do not apply to this case: Porter was not proceeding in forma pauperis, nor was he a prisoner."

Accord, *Marks v. Slocum*, 98 F.3d 494, 495 (9th Cir. 1996) (per curiam) ("§ 1915(e)(2) (as amended) applies to prisoner proceedings in forma pauperis"); *Weldon v. Cywinski*, 222 Fed. Appx. 205, 207 (3d Cir. 2007) (per curiam) ("Because Weldon is proceeding in forma pauperis, we must analyze his appeal for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B).").

In *Cameron v. Fogarty*, 705 F.2d 676, 678 (2nd Cir. 1983), the Second Circuit entered an identical decision to those above of the Fifth, Sixth, Tenth, Eighth, Ninth, and Third Circuits:

> "In the instant case, the district court dismissed the action sua sponte under 28 U.S.C. § 1915(d)

> when Cameron had in fact apparently not sought to proceed in forma pauperis . . . The district court therefore erred in dismissing the complaint under the standards of the in forma pauperis statute, 28 U.S.C. § 1915(d)."

In *Pillay v. INS*, 45 F.3d 14, 16 (2nd Cir. 1995), the Second Circuit reiterated its holding in *Cameron* ("Pillay, although unrepresented, has not proceeded in forma pauperis in pursuing his petition for review . . . Accordingly, § 1915(d) is not applicable to this appeal, and we may not rely upon it as a basis to dismiss Pillay's appeal."). In *Pillay*, *Id.*, at 16-17, the Second Circuit, instead, relied upon its inherent authority to dismiss an appeal as frivolous whose "applicable standards are the same as those articulated by the Supreme Court in *Neitzke* and *Denton* for dismissal of appeals pursuant to § 1915(d)." Contrary to *Pillay*, the Second Circuit in this case clearly did not rely upon its inherent authority, since it dismissed Glatzer's appeal and action as frivolous expressly pursuant to § 1915(e). Even if, hypothetically, this were a mistake, it is not harmless error since the Second Circuit did not apply the "same" referenced standards under § 1915(e), which mandated that it provide a statement explaining the reasons for its dismissal (as, indeed, it did provide in *Pillay*).

II. THE COURT SHOULD GRANT THIS PETITION BECAUSE THE SECOND CIRCUIT'S ORDER OF DISMISSAL MERITS REVIEW AT THIS TIME, EVEN IF THE COURT FINDS THAT THE SECOND CIRCUIT DID NOT ENTER A GENUINELY FINAL JUDGMENT

In *Hibbs v. Winn*, 542 U.S. 88, 98 (2004), the Court (Justice Ginsburg) held that "a genuinely final judgment is critical under the statute" (28 U.S.C. § 2101(c)) for the Court to exercise its certiorari jurisdiction. Unlike *Hibbs*, where the issue was whether the finality of the judgment was suspended, there is *no* judgment in this case because the Second Circuit refused to issue a judgment under Fed.R.App.Proc. 36(a)(2) ("if a judgment is rendered without an opinion, as the court instructs").

Since the Second Circuit refused to issue a judgment, the Clerk under Fed.R.App.Proc. 41(a) ("the mandate consists of a certified copy of the judgment . . .") treated the Dec. 14, 2009 order of dismissal as the judgment in the mandate three months later on March 24, 2010 (the Clerk stamped the word mandate on the order of dismissal). *Commissioner of Internal Revenue v. Bedford's Estate*, 325 U.S. 283, 286 (1945) (Justice Frankfurter). In *Commissioner*, however, there were three instruments (the order, the Second Circuit's then "Order for Mandate" which the Court held was the judgment, and the separate mandate), whereas in this case there are only two instruments (the order of dismissal, and the order of dismissal treated as the judgment in the mandate).

The order of dismissal treated as the judgment in the mandate cannot be modified and is final under *Hibbs*, because the Clerk's issuance of mandate transfered jurisdiction back to the district appellate court, and was mutually exclusive with Glatzer's filing in the Second Circuit within 14 days thereafter a petition for rehearing (or en banc) under Fed.R.App.Proc. 40(a)(1) (or under Rule 35(c)) pursuant to Sup. Ct. R. 13.1 and 13.3. Modification of a judgment also was prevented by the Second Circuit's prior refusals to issue a judgment and to allow Glatzer to file a petition for rehearing thereupon. The Second Circuit's dual *prevention* of modification of a judgment, however, may be inconsistent with its demanded determination of "whether the judgment should be modified" (*Hibbs*, *supra*, 542 U.S., at 98) to render the judgment genuinely final, as a result of which the Court may find that the Second Circuit did not enter a genuinely final judgment.

Even if the Court so finds, the Court should review the order of dismissal because it is unquestionably final, and because it merits review at this time since it involves issues that are fundamental to the further conduct of this case. *Land v. Dollar*, 330 U.S. 731, 734, n.2 (1947) ("Although the judgment below was not a final one, we considered it appropriate for review because it involved an issue 'fundamental to the further conduct of the case'").

The order of dismissal is unquestionably final, because the Second Circuit denied on March 3, 2010 Glatzer's motion for reconsideration of the order (App. 21), which it directed Glatzer to serve and file (even though the motion for reconsideration does not exist. *Mancuso v. Herbert*, 166 F.3d 97, 99 (2nd Cir. 1999)

(Chief Judge Winter)). The order of dismissal involves issues that are fundamental to the further conduct of this case, because the order of dismissal "does not prejudice (Glatzer's filing of a second complaint) making the same allegations" (*Denton*, *supra*, 504 U.S., at 341, since the order of dismissal was without prejudice and not a dismissal on the merits, *supra*, at 16-17.

These "same allegations" in a second complaint include Glatzer's foregoing quantum meruit claim against Enron, premised upon Skilling's compensation at Enron directly resulting from Bear, Stearns' securing his first job at Enron – Skilling's accepted *bribe* from Bear, Stearns for awarding Bear, Stearns the investment banking fees for Enron's implementation of Glatzer's stolen business plans. *Skilling*, *supra*, 561 U.S. __ (at 36 and 45) (June 24, 2010). The issue of whether Glatzer's quantum meruit claim against Enron is frivolous, is fundamental to the further conduct of this case, and especially since the Court's intervening decision in *Skilling* is sufficiently analogous to and has a legal bearing on the quantum meruit claim. For these reasons, the order of dismissal which refused to provide any explanation of why the quantum meruit claim is frivolous, merits review by the Court at this time. If the Court, however, declines to review the order of dismissal at this time pursuant to its finding that the Second Circuit did not enter a genuinely final judgment in this case, the Court, instead, should issue an order dismissing this Petition for lack of jurisdiction.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Dated: August 2, 2010

Respectfully submitted,

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Petitioner Pro Se
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APPENDIX

APPENDIX

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S.D.N.Y. - N.Y.C.
04-cv-4897
Batts, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

No. 09-0363-bk

[Filed December 14, 2009]

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 14th day of December, two thousand nine,

Present:

Robert A. Katzmann,
Debra Ann Livingston,
Gerard E. Lynch,
Circuit Judges.

Bernard H. Glatzer,

Claimant-Appellant,

v.

Enron Corporation,
Enron North America Corporation,

Debtors-Appellees.

Appellant, *pro se*, moves to enjoin Debtors-Appellees from making further distributions pending the disposition of this appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See* 28 U.S.C. § 1915(e); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (defining when an action lacks an arguable basis in law or fact).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Richard Alcantara
Richard Alcantara, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 04 Civ. 4897 (DAB)

[Filed September 29, 2008]

BERNARD H. GLATZER,	)
	)
Claimant-Appellant,	)
	)
- against -	)
	)
ENRON CORP. and ENRON NORTH AMERICA CORP.,	)
	)
Debtors-Appellees.	)
	)

MEMORANDUM & ORDER

DEBORAH A. BATTS, United States District Judge.

Claimant-Appellant Bernard H. Glatzer ("Appellant") appeals from an April 9, 2004 Order of the United States Bankruptcy Court for the Southern District of New York (Arthur J. Gonzales, B.J.) (the "Bankruptcy Court") disallowing and expunging, pursuant to 11 U.S.C. § 502, Proofs of Claim Number 12858, 12859 and 12860, filed by Appellant on October 15, 2002, in Appellees Enron Corporation's and Enron North America Corporation's ("Appellees") Chapter 11 bankruptcy proceedings.

The Bankruptcy Court found that the debts claimed in Proofs of Claim Number 12858, 12859 and 12860

were unenforceable against Appellees because they were based upon legal claims that Appellant had litigated and lost in both federal and state courts; Appellant's claims were barred by the issue preclusive and res judicata effects of those courts' judgments against him.

Appellant, an attorney proceeding pro se, raises a whole host of issues on this appeal. In connection with those issues, Appellant presses upon this Court a wide range of allegations concerning how he was cheated in his business dealings in the early 1990s, how he was deprived of his parental rights by his ex-wife and how numerous individuals and entities have conspired against him and continue to do so. He also complains at length about the supposed incompetence and dishonorable conduct of nearly all of his previous attorneys in the numerous lawsuits he has filed around the country over several years. Last, but not least, Appellant suggests that the various state and federal courts that have adjudicated and dismissed his claims against Appellees since 1993 have all somehow erred and that further litigation will certainly show them the error of their ways. In that regard, Appellant contends on this appeal that the Bankruptcy Court not only erred in disallowing and expunging his Proofs of Claim, but that it ought to have granted him extensive relief to permit him to pursue his claims against Appellees, involving the alleged theft of his business plans and an alleged conspiracy to deprive him of his parental rights, in Appellees' Chapter 11 proceedings and in state court.

Appellant's myriad factual allegations -- largely unsupported by any sworn affidavits or declarations, official records or any other admissible evidence -- are

irrelevant to the purely legal threshold question of whether the Bankruptcy Court correctly disallowed and expunged Appellant's three Proofs of Claim under 11 U.S.C. § 502. The Court finds it abundantly clear that the legal claims underlying Proofs of Claim Number 12858, 12859 and 12860 have already been adjudicated and dismissed by state and federal courts and that Appellant is bound by those adjudications. The Bankruptcy Court thus did not err by refusing to permit Appellant to pursue those extinguished and unenforceable claims in Appellees' Chapter 11 proceedings and in state court and the Court will not consider the claims of error that Appellant raises with respect to those issues. For the reasons set forth below, the Bankruptcy Court's April 9, 2004 Order disallowing and expunging Appellant's Proofs of Claim Number 12858, 12859 and 12860 is AFFIRMED.[1]

BACKGROUND

A. Proofs of Claim Number 12858 and 12859: Appellant's Business Tort Claim

Appellant's Proofs of Claim Number 12858 and 12859 were identical: each claimed that Appellees owed him a contingent debt of $500 million, which represented the damages that Appellant had sought against Appellees in Glatzer v. Enron Corp., et al., Index No. 16456/96 (N.Y. Sup. Ct. – Bronx Co.) (hereinafter "Glatzer v. Enron Corp., et al., Index No.

---

[1] Accordingly, Appellant's request for leave to file a motion seeking to have the Court withdraw the reference to the Bankruptcy Court and to permit him to pursue his claims against Appellees in state court is hereby DENIED.

16456/96"). (See Proofs of Claim No. 12858 & 12859.) On July 9, 1999, the New York State Supreme Court, Bronx County (Kenneth L. Thompson, J.) granted summary judgment in favor of Appellees and dismissed the claims upon which Appellant's Proofs of Claim Number 12858 and 12859 are based. (In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. D.)

Justice Thompson's decision to grant summary judgment in favor of Appellees was based on a June 10, 1998 grant of summary judgment against Appellant in a parallel case before Judge Kevin T. Duffy, in the United States District Court for the Southern District of New York. The case before Judge Duffy, Glatzer v. Bear Stearns & Co., Inc., 95 Civ. 1154 (KTD), involved the same substantive claims that Appellant had brought against Appellees in Glatzer v. Enron Corp., et al., Index No. 16456/96. Appellant was represented by counsel in both matters.

Judge Duffy reached the merits of Appellant's claim that, in 1990, Appellees, along with Bear Stearns & Co., Inc., had misappropriated his purportedly novel business plan "to 'provide financing for the exploration and production of oil and natural gas by independent oil and gas companies utilizing the securitization of production payments.'" (See Summary Order, Glatzer v. Bear Stearns & Co., et al., No. 95 Civ. 1154 (KTD) (S.D.N.Y. June 10, 1998) at 1 (quoting Pl.'s Stmt. at ¶ 2; Def.'s Stmt. at ¶ 8).) Judge Duffy found that Appellant:

> failed to offer any evidence that his plan was novel and, as such, has failed to show that it constitutes property under New York law. Thus,

> Glatzer has no cause of action for the plan's unauthorized use, and all his claims must be dismissed.

(Id. at 4.) Judge Duffy further stated in a footnote as follows:

> I further note that the essential elements of Glatzer's plan -- securitization -- has been in existence since at least the early 1970s and applied to "practically everything" from home mortgages to credit card debt, auto loans and even the future royalties of rock stars and authors.

(Id. n. 5. (citations omitted).) Accordingly, Judge Duffy granted Bear Stearns & Co., Inc.'s motion for summary judgment and dismissed Appellant's claims. Appellant appealed Judge Duffy's June 10, 1998 decision to the Second Circuit Court of Appeals but then later withdrew the appeal on February 9, 1999. (See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. B.) Appellant withdrew the appeal as a result of reaching a settlement with Bear Stearns & Co., Inc., whereby Appellant would receive $75,000 in exchange for Bear Stearns & Co., Inc.'s best efforts to obtain the vacatur of Judge Duffy's June 10, 1998 summary judgment decision. (See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Nov. 7, 2003) (Dkt. No. 14095) Ex. 9.)

Appellant later moved for reconsideration of Judge Duffy's June 10, 1998 summary judgment decision, requesting that the decision be vacated. (See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. A.) In an Order dated June

21, 2002, Judge Duffy denied Appellant's motion to vacate the June 10, 1998 summary judgment decision. (See Id.) Judge Duffy also warned Appellant that he could be subject to sanctions under Fed. R. Civ. P. 11 if he were to pursue any further frivolous litigation before him in that matter. (Id.) Appellant appealed to the Second Circuit from Judge Duffy's June 21, 2002 Order. (Id.) On November 20, 2003, in a summary order, the Second Circuit affirmed Judge Duffy's denial of Appellant's motion to vacate the June 10, 1998 summary judgment decision. See Glatzer v. Bear Stearns & Co., Inc., 81 Fed. Appx. 363, 364 (2d Cir. 2003). Judge Duffy's June 10, 1998 grant of summary judgment against Appellant on the merits of his business tort claim against Bear Stearns & Co., Inc. and Appellees is thus final.

In his July 9, 1999 decision granting summary judgment for Appellees in Glatzer v. Enron Corp., et al., Index No. 16456/96, Justice Thompson extensively quoted Judge Duffy's June 10, 1998 summary judgment decision holding that Appellant did not have any enforceable property interest in his purportedly novel business plan. (See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. D at 10.) Justice Thompson found that based on 'the adjudication in Federal Court, the plaintiff, Bernard H. Glatzer is now collaterally estopped from relitigating these same issues in this court." (Id. (citations omitted).) Justice Thompson also rejected Appellant's contention that Judge Duffy's June 10, 1998 summary judgment decision should not be given issue preclusive effect in favor of Appellees because he and Bear Stearns & Co., Inc. had agreed that they would seek a vacatur of that decision. (See Id. at 11-12.) Appellant appealed to the Appellate

Division, First Department from Justice Thompson's July 9, 1999 summary judgment decision. On November 28, 2000, the First Department affirmed Justice Thompson's entry of summary judgment in favor of Appellees, holding as follows:

> The motion court correctly held that the U.S. District court order of June 10, 1998 collaterally estops plaintiff from asserting that the idea he claims that defendants misappropriated was novel, and precludes all of plaintiff's causes of action herein. The stipulated withdrawal of plaintiff's appeal to the Second Circuit left the District Court's order intact. There is no merit to plaintiff's argument that his attorney's alleged ineptitude deprived him of a full and fair opportunity to litigate the motion underlying the Federal court order. On the contrary, the record indicates that the attorney vigorously litigated plaintiff's claims. In view of the foregoing, plaintiff's remaining points are moot.

Glatzer v. Enron Corp., 277 A.D.2d 161, 161, 716 N.Y.S.2d 307 (N.Y. App. Div. – 1st Dept. 2000).

B. Proof of Claim Number 12860: Appellant's Civil Rights Conspiracy Claim

Appellant's Proof of Claim Number 12860 claimed that Appellees owed him a contingent debt of $27 million in connection with their alleged conspiracy with his ex-wife and a number of other defendants to violate his civil rights. (See Proof of Claim No. 12860.) Appellant had filed Glatzer v. Glatzer, et al., 14063/01 (N.Y. Sup. Ct. – Bronx Co.) (hereinafter "Glatzer v.

Glatzer, et al., 14063/01") against his ex-wife and a number of other defendants. Appellees, however, were never actually named as defendants in that action, which involved a dispute regarding Appellant's child support obligations to his ex-wife. The Court takes judicial notice of the fact that in a Memorandum Decision dated October 12, 2001, the New York State Supreme Court, Bronx County (La Tia Martin, J.) denied, inter alia, Appellant's motion to file a proposed First Amended Complaint. Appellant contends that he would have asserted a claim against Appellees under 42 U.S.C. § 1983 had be been granted leave to file the amended complaint. (In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Nov. 7, 2003) (Dkt. No. 14095) ¶¶ 13 & 114.)

Having failed to join Appellees as defendants in Glatzer v. Glatzer, et al., 14063/01, Appellant filed another action in the United States District Court for the Southern District of Texas against his ex-wife and a number of other defendants: Glatzer v. The Chase Manhattan Bank, et al., Civ. Action No. H-03-4471 (Melinda Harmon, D.J.) (S.D. Tex). Appellant claimed in the Southern District of Texas proceeding that Appellees had conspired with his ex-wife and others to unconstitutionally deprive him of his parental rights, including the custody of his two children. Appellees were not named as defendants in the suit. In any event, on November 21, 2003, Judge Melinda Harmon dismissed the suit for lack of subject matter jurisdiction, finding that the Rooker-Feldman doctrine and the principles of federal court abstention set forth in Younger v. Harris, 401 U.S. 37 (1971) precluded the court from entertaining Appellant's claims, which were inextricably intertwined with the child custody dispute that Appellant had litigated (largely unsuccessfully) in

numerous state courts since 1986 and that might have been on-going. (See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. E.)

DISCUSSION

District courts are vested with appellate jurisdiction over final orders, decrees and judgments of bankruptcy court under 28 U.S.C. § 158(a). Rule 8013 of the Federal Rules of Bankruptcy provides that a district court conducting appellate review may affirm, modify, or reverse a bankruptcy judge's judgment, order or decree or remand with instructions for further proceedings." Fed. R. Bankr. P. 8013. District courts review bankruptcy court findings of fact for clear error and apply de novo to their conclusions of law. See In re Adelphia Communications Corp., 367 B.R. 84, 90-91 (S.D.N.Y. 2007); Ernst & Young v. Bankruptcy Servs. (In re CBI Holding Co., Inc.), 311 B.R. 350, 360 (S.D.N.Y. 2004).

Section 502(b) of the Bankruptcy Code provides, in pertinent part, that where a Chapter 11 debtor files an objection to a creditor's claim, the bankruptcy court:

> after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that --
>
> > (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for reason other

> than because such claim is contingent or unmatured
>
> * * *

11 U.S.C. § 502(b)(1). The Supreme Court has opined that 11 U.S.C. § 502(b)(1) "is most naturally understood to provide that, with limited exceptions, any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." Travelers Cas. & Sur. Co. of America v. Pac. Gas & Elec. Co., 549 U.S. 443, 127 S.Ct. 1199, 1204, 167 L.Ed.2d 178 (2007). The Court also stated that "when the Bankruptcy Code uses the word 'claim' -- which the Code itself defines as a 'right to payment,' -- it is usually referring to a right to payment under state law." Id. at 1205 (citations omitted); see also In re Duplan Corp., 212 F.3d 144, 151 (2d Cir. 2000) (quoting In re Chateaugay Corp., 53 F.3d 478, 497 (2d Cir. 1995)) ("A claim arises for purposes of bankruptcy when 'the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation . . . under the relevant non-bankruptcy law'"). As a court in this district recently noted, "[w]hile section 502 requires that the amount of a claim be determined as of the date of the filing of this petition, there is nothing in that section that requires a court to ignore that the claim is no longer valid under state law." In re Ernst, 382 B.R. 194, 197 (S.D.N.Y. 2008).

Bankruptcy courts, like all federal courts, are bound to give "preclusive effect to state court judgments whenever the courts of the state from which the judgments emerged would do so." Kelleran v. Andrijevic, 825 F.2d 692, 694 (2d Cir. 1987) (citing

Allen v. McCurry, 449 U.S. 90, 96 (1980)). Therefore, "bankruptcy proceedings may not be used to re-litigate issues already resolved in a court of competent jurisdiction." Id. at 695; see, e.g., In re Duncan, 308 B.R. 138, 148 (Bankr. E.D.N.Y. 2004) (affirming bankruptcy court ruling that res judicata precluded debtor from litigating in bankruptcy proceeding, a prior entry of a partial consent judgment against debtor by a district court); In re Bocker, 123 B.R. 164, 165 (E.D.N.Y. 1991) (upholding bankruptcy court's dismissal of a claim that had already been the subject of a default judgment in state court); In re Lady Liberty Tavern Corp., 94 B.R. 812, 816 (S.D.N.Y. 1988) (reversing bankruptcy court that failed to accord preclusive effect to state court's default judgment on lease termination).

"The doctrine of res judicata, or claim preclusion, is designed to 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.'" Ins. Co. of State of Pa. v. HSBC Bank USA, 10 N.Y.3d 32, 38, 882 N.E.2d 382, 385 (N.Y. 2008) (quoting Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980)). "Under New York's transactional approach to the rule, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.'" Josey v. Goord, 9 N.Y.3d 386, 389-90, 880 N.E.2d 18 (N.Y. 2007) (quoting O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 429 N.E.2d 1158 (N.Y. 1981)).

Furthermore, under New York law, "[i]n order to invoke the doctrine of collateral estoppel, '[t]here must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling.'" Launders v. Steinberg, 9 N.Y.3d 930, 932 976 N.E.2d 901 (N.Y. 2007) (quoting Buechel v. Bain, 97 N.Y.2d 295, 303-304, 740 N.Y.S.2d 252, 766 N.E.2d 914 (2001), cert. denied, 535 U.S. 1096, 122 S.Ct. 2293, 152 L.Ed.2d 1051 (2002)).

After providing Appellant and Appellees ample opportunity to brief their arguments, providing all necessary notice and after holding a hearing, the Bankruptcy Court disallowed and expunged Proofs of Claim Number 12858 and 12859 on April 9, 2004 upon finding that

> even if the Claimant was successful in vacating the State Court Order [i.e., Justice Thompson's July 9, 1999 decision granting summary judgment for Appellees in Glatzer v. Enron Corp., et al., Index No. 16456/96] that the underlying legal principles applied by the State Court in that matter regarding the issue preclusive effect of an order, entered on June 10, 1998, by United States District Judge for the Southern District of New York, Kevin Thomas Duffy, would still result in the expungement and disallowance of Claimant's alleged "business claims" . . . .

(In re Enron, No. 1-16034 (Bankr. S.D.N.Y. Apr. 9, 2004) (Dkt. No. 17655) at 2.) The Bankruptcy Court's April 9, 2004 Order also disallowed and expunged

Proof of Claim Number 12860, adopting the reasons set forth in Appellees' objection "in connection with Claimant's alleged 'civil rights claim.'" (Id.)

On November 20, 2000, the First Department affirmed, and rendered final, Justice Thompson's July 9, 1999 decision granting summary judgment in favor of Appellees in Glatzer v. Enron Corp., et al., Index No. 16456/96, the basis for Proofs of Claim Number 12858 and 12859. See Glatzer v. Enron Corp., 277 A.D.2d 161, 161, 716 N.Y.S.2d 307 (N.Y. App. Div. – 1st Dept. 2000). On November 20, 2003, the Second Circuit affirmed Judge Duffy's denial of Appellant's motion to vacate his June 10, 1998 summary judgment decision in Glatzer v. Bear Stearns & Co., Inc., 95 Civ. 1154 (KTD), thereby further reinforcing Justice Thompson's judgment in favor of Appellees, which had been based upon Judge Duffy's June 10, 1998 decision. Appellant had a full and fair opportunity to litigate his claims against Appellees in both state and federal court -- he ultimately lost in both. The doctrine of res judicata therefore bars his business tort claims against Appellees.

With respect to Appellant's purported civil rights conspiracy claim against Appellees, the Court takes judicial notice of the fact that, on October 12, 2001, Justice La Tia Martin issued a Memorandum Decision denying Appellant's motion to join Appellees as defendants in Glatzer v. Glatzer, et al., 14063/01, a case involving Appellant's child custody payments. As a result, Appellant did not have an opportunity to litigate his civil rights conspiracy claim in Glatzer v. Glatzer, et al., 14063/01, even though his Proof of Claim Number 12860 states that Appellees owe him a debt based on that proceeding. Appellant did, however,

litigate his civil rights conspiracy claim, which implicated Appellees, among several other individuals and entities, in his action before the Southern District of Texas. On November 21, 2003, Judge Harmon of the Southern District of Texas determined that the court lacked subject matter jurisdiction over Appellant's claims under the Rooker-Feldman doctrine:

> Although couched as a § 1983/procedural due process claim, Plaintiff in essence is collaterally challenging the state court orders (orders of Thomason acting as Temporary Court) in California dealing with his child custody dispute, and possibly rulings in Oklahoma and New York refusing to review his claims.

(See In re Enron Corp., No. 1-16034 (Bankr. S.D.N.Y. Mar. 1, 2004) (Dkt. No. 16622) Ex. E.) Thus, as of April 9, 2004, when the Bankruptcy Court issued its Order, it was clear that Appellant had no enforceable rights to the debts claimed against Appellees in Proofs of Claim Number 12858, 12859 and 12860 under either state or federal law. The Court therefore finds that the Bankruptcy Court correctly disallowed and expunged Appellant's Proofs of Claim Number 12858, 12859 and 12860 pursuant to 11 U.S.C. § 502(b)(1) . Cf. In re Ernst, 382 B.R. at 197 ("It would be anomalous for the [Bankruptcy Court] to conclude that the Appellant's claim is enforceable under New York State law when it is plainly not enforceable").

Accordingly, the Bankruptcy Court's Order dated April 9, 2004 is AFFIRMED.

CONCLUSION

For the foregoing reasons, the Order of the Bankruptcy Court, dated April 9, 2004, disallowing and expunging Appellant's Proofs of Claim Number 12858, 12859 and 12860, pursuant to 11 U.S.C. § 502, is hereby AFFIRMED. The Clerk of Court is directed to close the docket in this case.

SO ORDERED.

Dated: New York, New York

September 29, 2008

/s/ Deborah A. Batts
DEBORAH A. BATTS
United States District Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11
Case No. 01-16034 (AJG)
Jointly Administered

[Filed April 9, 2004]

In re	)
	)
ENRON CORP., et al.	)
	)
Debtors.	)
	)

ORDER GRANTING THE DEBTORS' OBJECTION TO PROOFS OF CLAIM NOS. 12858, 12859, AND12860 FILED BY BERNARD H. GLATZER

Upon consideration of the Debtors' Sixteenth Omnibus Objection to Proofs of Claim, dated September 23, 2003 (the "Objection") and the Debtors' Reply in Support of the Objection, dated March 1, 2004 (the "Reply"), seeking the entry of an order disallowing and expunging certain claims (the "Claims") pursuant to section 502(a) of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), as identified on Exhibit G to the Reply; the Objections and Responses To Debtors' Sixteenth Omnibus Objection To Proofs of Claim filed by Bernard Glatzer ("Claimant") ("Claimant's Reply"), the Debtors' Supplemental Objection And Reply To Proofs of Claim (Claim Nos. 12858, 12859, 12860 Filed By Bernard H. Glatzer) ("Debtors' Supplemental Objection and

Reply"), Claimant's Sur-Reply To Debtors' Supplemental Objection and Reply (Claimant's Sur-Reply"), Debtors' Sur Sur-Reply To Claimant's Sur-Reply To Debtors' Supplemental Objection And Reply To Proofs of Claim ("Debtors' Sur Sur-Reply" and together with the Objection, the Reply, and the Debtors' Supplemental Objection and Reply, the "Debtors' Objection") and pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, good and sufficient notice having been provided to the attorneys for the statutory committee of unsecured creditors, the Office of the United States Trustee for the Southern District of New York, counsel to the Employment-Related Issues Committee, the persons or entities that filed the proofs of claim identified on Exhibit G attached to the Reply and their attorneys (if known), and any other parties on the Debtors' Master Service List; and it appearing that no other or further notice need be provided; and the Court having reviewed the Debtors' Objection and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Debtors' Objection, and at the Hearing, establish just cause for the relief granted herein; and for the reasons set forth more fully in Debtors' Objection and upon all of the proceedings had before the Court; and the Court having considered Claimant's contention that the Claimant should be afforded an opportunity to seek the vacatur of the New York State Supreme Court Order ("State Court Order'), as more fully discussed in his papers, based upon, among other things, Claimant's alleged new evidence regarding conflict of interest issues regarding his attorney in connection with the State Court Order; and the Court having considered that even if the

Claimant was successful in vacating the State Court Order that the underlying legal principles applied by the State Court in that matter regarding the issue preclusive effect of an order, entered on June 10, 1998, by United States District Judge for the Southern District of New York, Kevin Thomas Duffy, would still result in the expungement and disallowance of Claimant's alleged "business claims" (Proofs of Claim Nos. 12858 & 12859); and for the reasons set forth in Debtors' Objection in connection with Claimant's alleged "civil rights claim" (Proof of Claim No. 12860); and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, pursuant to section 502(a) of the Bankruptcy Code, Proofs of Claim Nos. 12858, 12859 and 12860 filed by Claimant Bernard H. Glatzer and identified on Exhibit G to the Reply are hereby disallowed and expunged in their entirety.

Dated: New York, New York
April 9, 2004

s/ Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket No. 09-0363-bk

[Filed March 3, 2010]

At a Stated Term of the United States Court of Appeals for the Second Circuit held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on the 3rd day of March, two thousand and ten.

Before: Robert A. Katzmann,
Debra Ann Livingston,
Gerard E. Lynch,
Circuit Judges.

In Re: Enron Corp.	)
	)
Debtor,	)
	)
**********	)
Bernard H. Glatzer,	)
	)
Claimant-Appellant,	)
	)
v.	)
	)
Enron Corporation,	)
Enron North America Corporation,	)
	)
Debtors-Appellees.	)
	)

IT IS HEREBY ORDERED that the motion by *pro se* attorney Appellant Glatzer for reconsideration of the order of December 14, 2009 is DENIED.

FOR THE COURT,
Catherine O'Hagan Wolfe,
Clerk

[seal]

/s/ Catherine O'Hagan Wolfe

Joy Fallek, Administrative Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

In Re: Enron Corp.

Docket Number(s): 09-0363-bk

Motion for: Clarification of Dec. 14, 2009 Order Dismissing Appeal

Set forth below precise, complete statement of relief sought:

An order clarifying the bases of the court's Dec. 14, 2009 order dismissing appeal

MOVING PARTY: Bernard H. Glatzer

☒Plaintiff ☐Defendant
☒Appellant/Petitioner ☐Appellee/Respondent

MOVING ATTORNEY: Bernard H. Glatzer, ProSe
[name of attorney, with firm, address, phone number and e-mail]

2707 Creston Ave., #2F, Bronx, New York 10468; (718) 584-3998; bernardglatzer@gmail.com

OPPOSING PARTY: Enron Corp. and Enron North America Corp.

OPPOSING ATTORNEY: Robert Michaelson
[name of attorney, with firm, address, phone number and e-mail]

K&L Gates LLP, 599 Lexington Ave., New York, New York 10153; (212) 536-3900; Robert. Michaelson@KLGates.com

Court-Judge/Agency appealed from: U.S.D.C. (S.D.N.Y.)/Hon. Deborah A. Batts

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? ☒Yes ☐No
B. been obtained? ☐Yes ☒No

Is oral argument requested? ☐Yes ☐No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?
☐Yes ☐No

If yes, enter date N/A

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐Yes ☐No

Has this relief been previously sought in this Court? ☐Yes ☐No

Requested return date and explanation of emergency:

_____

_____

Signature of Moving Attorney:

_____ Date Dec. 25, 2009

Has service been effected? ☒Yes ☐No

ORDER

[Filed January 29, 2010]

Before: Robert A. Katzmann, Debra Ann Livingston, Gerard E. Lynch, *Circuit Judges*

IT IS HEREBY ORDERED that the motion by attorney Glatzer for clarification of the Court's order of December 14, 2009 is DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,

[seal]

/s/ Catherine O'Hagan Wolfe

1/29/10 Joy Fallek, Administrative Attorney
Date

TUESDAY, JUNE 7, 2005 C1
MONEY & INVESTING
THE WALL STREET JOURNAL.

His Decade of Chasing Skilling

Bernard Glatzer, From the Bronx, Dogs Enron Ex-CEO for Deposition; His Lawsuit Helps Raise Questions

By JOHN R. EMSHWILLER

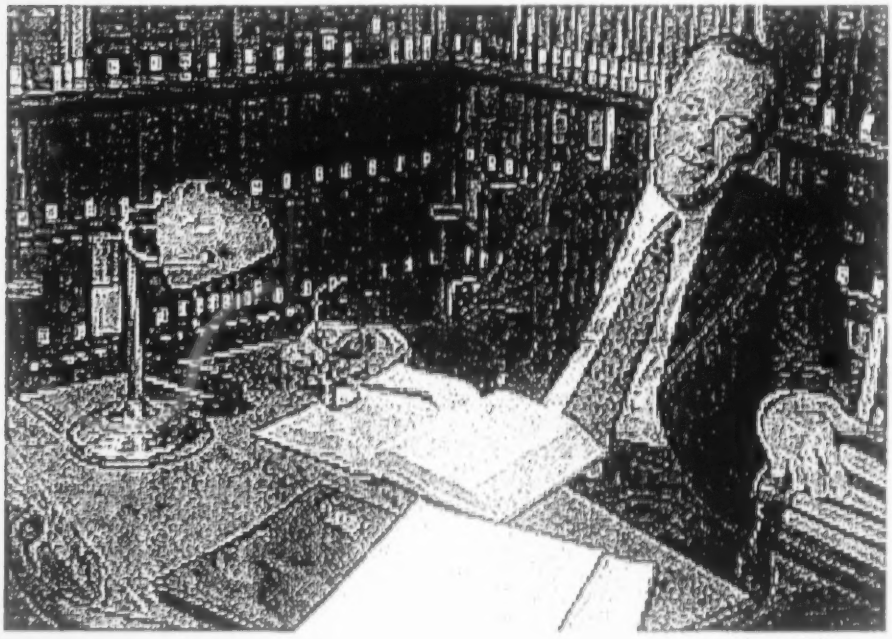
YEARS BEFORE federal prosecutors and class-action lawyers began dogging Jeffrey Skilling, Bernard Glatzer was chasing the former Enron Corp. chief executive. He still is.

Now, Mr. Glatzer wants to question Mr. Skilling under oath before Mr. Skilling's criminal trial, scheduled for January, begins in a federal court in Houston.

It isn't a simple task. A New York state-court judge authorized the deposition as part of Mr. Glatzer's latest lawsuit, filed in pursuit of a claim that Enron stole a valuable energy-financing idea from him some 15 years ago. Earlier this year, Mr. Glatzer moved to have a summons served on Mr. Skilling—along with a required $10 witness fee paid to him—at his gated Houston mansion. The deposition was blocked, at least temporarily, when Mr. Glatzer's lawsuit was transferred to federal court in New York, where a judge is now weighing its fate.

The 57-year-old Mr. Glatzer—who lives in the Bronx borough of New York City and is living off his

investments—has known more frustration than success in his decade-long legal odyssey. He has seen two previous lawsuits dismissed and reached one settlement that he now claims was breached. He has gone through a string of lawyers, including the firm headed by well-known litigator David Boies. An attorney by training who is looking into new energy-related ventures when he's not litigating, Mr. Glatzer is currently representing himself.



Joe Major

'Skilling is the only one *who knows everything,' says* **Bernard Glatzer**, *pictured at a New York City bar association office.*

At the same time, his efforts have helped raise questions about activities in Enron's early days. Similar, later projects are at the heart of the alleged fraud at Enron. Once a relatively lonely voice in

claiming wrongdoing at Enron, Mr. Glatzer has been joined by a chorus that includes the Justice Department and Enron shareholders. Last year, prosecutors filed a broad conspiracy and fraud indictment against Mr. Skilling and other former top Enron executives. All the defendants have pleaded not guilty.

Though Mr. Glatzer claims that Mr. Skilling was at the center of the alleged scheme against him, Mr. Glatzer has never named the Enron executive as a defendant in his lawsuits.

Instead, he has sued Enron and investment bank Bear Stearns Cos., which allegedly took part in the purported theft. His current suit, claiming some $500 million in damages, is filed against Bear Stearns, though he is also pursuing a claim against Enron in that company's federal bankruptcy proceeding.

Enron, Bear Stearns and Mr. Skilling have denied any wrongdoing in connection with Mr. Glatzer. Bear Stearns is seeking to have Mr. Glatzer's latest suit dismissed.

Mr. Glatzer says that when he filed his original litigation in the 1990s, he didn't sue Mr. Skilling because Enron and Bear Stearns offered deeper pockets to pursue. These days, Mr. Glatzer adds, Mr. Skilling has so many Enron-related criminal and civil woes that "he isn't going to have any money left" to go after.

Still, he views the former Enron chief as the key to his case. "Skilling is the only one who knows everything," says Mr. Glatzer.

While working in the energy business in Houston in the 1980s, Mr. Glatzer says he came up with an innovative energy-financing plan that bundled interests in natural-gas production into securities to be sold to institutional investors. He turned to Bear Stearns for help in selling the planned securities. He claims a Bear Stearns official illegally slipped his confidential plan to Mr. Skilling, who had been working as a consultant to Enron before joining the company in 1990. In his latest lawsuit, Mr. Glatzer contends Mr. Skilling used the idea to launch a financing operation that helped Enron secure gas supplies that it could sell, helping it build a hugely successful energy-trading operation.

One part of Enron's operation was financing vehicles known as the "Cactus" entities. Some of Mr. Glatzer's litigation-related research has raised questions about whether Enron improperly accounted for these entities and hundreds of millions of dollars of related debt. Similar financial entities that Enron later created were part of a giant accounting fraud at the company, according to government filings in various Enron-related criminal cases. The Cactus entities haven't been mentioned in any of those cases. Andrew Weissmann, head of the Justice Department's Enron Task Force, declined to comment.

Mr. Glatzer's litigation efforts also produced at least two documents that became more interesting following Enron's late 2001 collapse: transcripts of 1997 depositions that one of his attorneys took of Mr. Skilling and Enron's former chief financial officer, Andrew Fastow. In his deposition, Mr. Skilling said he came up with his gas-financing ideas completely independent of Mr. Glatzer, though he acknowledged

having discussed that subject with Bear Stearns. Mr. Skilling added that documents chronicling his early work in this area had either been lost or destroyed.

Though Mr. Skilling's deposition didn't support Mr. Glatzer's claims, the Enron executive did throw in a bit of musical entertainment. During a break, according to the deposition transcript, Mr. Skilling briefly sang along with the strains of a band playing in a nearby park, crooning "need some hot love baby."

It remains to be seen whether Mr. Skilling would provide any significant news in a second deposition. Daniel Petrocelli, Mr. Skilling's lead criminal defense attorney, says that if Mr. Glatzer gets permission to depose his client, the defense would seek to put off any such questioning until after next year's criminal trial. Mr. Petrocelli adds that while Mr. Skilling has nothing to hide in the Glatzer matter, the lawyer doesn't want his client distracted by civil litigation from preparations for the criminal case.

Bear Stearns attorneys are asking U.S. District Judge George Daniels to dismiss the case, partly on grounds that a 1998 settlement the company reached with Mr. Glatzer precludes him from suing again. Mr. Glatzer contends that the Wall Street firm violated that agreement by leaking its confidential terms to Enron—an allegation that Bear Stearns denies. A Bear Stearns spokeswoman said Mr. Glatzer's suit is "absolutely without merit." Judge Daniels could issue a ruling soon.